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UNCLAS SECTION 01 OF 03 TAIPEI 000745

SENSITIVE
SIPDIS

STATE PLEASE PASS TO AIT/W AND EAP/RSP/TC
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USDOC FOR 4431/ITA/MAC/AP/OPB/TAIWAN
USDOC ALSO FOR ITA/MAC/OIPR
USDOC PASS TO USPTO GIN, BROWNING, AND LOC STEPP
USDOJ FOR JOHN ZACHARIA

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [KIPR](#) [TW](#)
SUBJECT: Taiwan IPR: 301 Watch List OCR Process Update

Ref: A) State 43143; B) Taipei 734

¶1. (SBU) Summary: Taiwan is making progress in two of the three areas outlined in last month's 301 Watch List submission for Taiwan (ref A). The process of finalizing language for the internet service provider (ISP) amendments to Taiwan's Copyright Act has stalled due to ISP-industry objections over language that rights-holders believe is important to giving the legislation teeth. The Taiwan Intellectual Property Office (TIPO) now predicts that it will not be able to pass the final draft to the Executive Yuan (EY) until August at the earliest. In better news, the Intellectual Property (IP) Court is set to open on July 1, and will begin accepting new cases, including appeals, on that date, and the Ministry of Education (MOE) invited rights-holder and university representatives to another meeting of its IP task force to review progress under the ongoing Campus IP Action Plan. End summary.

TIPO Still Working on ISP Language

¶2. (U) On May 22, econoff met with Margaret Chen, Deputy Director General of TIPO, and Chang Yu-ying, Director of the TIPO Copyright Office, to discuss the current state of draft amendments to the Copyright Law that would limit an Internet service provider's (ISP) liability if the ISP quickly removed IPR-infringing material. This is the latest version of the amendments that TIPO first drafted in March 2007.

¶3. (SBU) Chang told us that after contentious public hearings on February 14 and May 7, the ISP industry and rights-holder groups still hold differing opinions on the draft amendments, with rights-holders pushing for inclusion of clear language outlining contributory or secondary liability for ISPs that negligently allow copyright-infringing materials to be hosted by their service (article 88 in the previous draft version), and ISPs strongly opposed to including such references. ISPs also worry that the draft language neither adequately protects ISPs from civil suits with a clear "safe-harbor" provision, nor protect ISPs from possible criminal suits, since copyright infringement in Taiwan can be subject to criminal prosecution. Other differences include each side's opinion on the definition of what an ISP is, and meanings for several other technical terms, but both sides agree that the key issue is secondary liability.

¶4. (SBU) Chang told econoff that the MOJ has verbally affirmed to TIPO the MOJ view that current ROC law (article 128 of the Civil Code) already contains the concept of secondary liability, that this would be applicable to ISPs, and that it would therefore be unnecessary and improper to re-state such liability in the ISP law draft. She said that MOEA has formally requested that the MOJ provide a clear written explanation on this question in order to

allay the concerns of rights-holders. She expects a reply from the MOJ in June, after which TIPO--assuming that rights-holders are on board--can complete the ISP law draft with the MOJ notes as reference materials by late June or early July, and then submit its final draft to the Executive Yuan in August.

¶15. (SBU) Local rights-holder groups IFPI Taiwan and Taiwan Foundation Against Copyright Theft (TFACT), however, strongly prefer including the current language in article 88 with clear statement of secondary liability for ISP operators. According to the two groups, although the Taiwan Civil Code contains the concept of liability for contributory or vicarious infringement, rights-holders fear that the Code is not clear enough about whether this liability would apply to ISPs. Rights-holders are somewhat flexible on this, however, and have told us that they could accept TIPO dropping "article 88" language as long as the MOJ written explanation is satisfactory and the final amendments retain article 90 quinque, which states that ISPs can be free from liability if they have taken swift action on a take-down notice.

¶16. (SBU) Econoff passed on USTR's request that TIPO accept another round of feedback from USTR on the current version of the amendments. Chen said TIPO will, of course, offer an English version of the ISP draft to the U.S. side for comments as soon as TIPO completes the ISP draft, and will welcome U.S. reactions and suggestions. She said the MOJ's clarification about secondary liability and U.S. comments will be key factors in determining the progress of Taiwan's ISP law legislation. Chen said that TIPO knows that the ISP law is a key factor in USTR's OCR, and that TIPO will continue to do its best to push a good ISP law to the LY as fast as possible.

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IP Court on Track for July Opening

¶17. (SBU) On May 23, econoff met with Kao Shiou-jen, Director of the Judicial Yuan (JY) Preparatory Office for the Intellectual Property Court and, after July 1, the President of the IP Court. Ms. Kao confirmed that the IP Court will begin operating on July 1 by accepting both new cases and appeals from cases that finished on or before June 30. She said that while the court will start with only eight judges, the JY plans to review this number after a suitable period has passed. At the initial stage, the IP court will also have nine technical experts who will serve as advisors and case review officers, and will also be available to support judges in district-level courts if needed. To support the IP Court, the Ministry of Justice will set up an office with three specialized IP prosecutors.

¶18. (SBU) Although JY regulations call for judges to complete first-instance cases within 16 months, Kao said that the IP Court will expect its judges to finish cases within 12 months. Also, the Court will ask its judges to complete criminal cases that have been appealed from local courts--a process that typically takes 24 months--"as quickly as possible."

MOE Gets Together with Industry and School Reps

¶19. (U) On May 12, the Ministry of Education (MOE) convened the third meeting of its IP Task Force to review university progress under the ongoing Campus IP Action Plan, which went into effect in October 2007.

¶10. (U) At the May 12 meeting, the MOE presented an interim report on progress thus far under the Action Plan. According to the report, 127 of Taiwan's 165 universities have set up IP protection teams on campus, most chaired either by the school's President or Vice President. 146 universities have held seminars, training programs, or short courses to promote the concept of IP protection on campus. Almost every university has distributed information on fair use of copyrighted materials and other IP information to both teachers and students, and 117 have set up IP consulting mechanisms for faculty and students to clarify fair-use and other IP-related questions with

scholars and legal experts. 78 universities invited TIPO's IP service team to conduct IP promotion activities on campus, and 73 sent teachers to take IP training from TIPO's IP Institute.

¶11. (U) 132 of 165 schools now include language in contracts with on-campus copy shops that allow the universities to terminate shops' contracts if the shops are found to have violated Taiwan's copyright laws, and an MOE staff member told us that the remaining 33 universities will insert similar language into such contracts at the time of the next renewal. According to the MOE report, almost all universities now affix warnings against illegal copying onto or near all campus photocopying machines. The majority have also established physical or virtual platforms for used-book exchange.

¶12. (SBU) To fight internet IPR violations, 159 universities have incorporated MOE guidelines into rules governing on-campus use of the island-wide academic network TANet, and almost all of these schools have established procedures to impose punishments on students who repeatedly and seriously infringe on intellectual property rights, and about 150 have set ceilings on data transmission and installed various measures to prevent infringement from P2P software. Local rights-holder groups--while still concerned about copyright infringements on TANet--tell us that they are pleased with the recent MOE pledge to respond to rights-holder TANet complaints within 60 days, and to periodically post on the MOE homepage statistics about TANet violations.

Comment

¶13. (SBU) We are confident that the IP Court will open as scheduled on July 1, and we assess that MOE-led campus IP enforcement efforts are moving forward, although the pace could be faster. The lack of progress toward satisfactory ISP-amendment language is disappointing, however, as the local ISP industry has continued to raise objections that need to be reviewed and addressed. Much will depend on the MOJ evaluation of how adequate secondary-liability concepts are in the current Civil Code. Although rights-holders are willing--under certain conditions--to accept a final version that lacks current "article 88" language, we will continue to use every occasion to push TIPO both to finalize amendments clearly

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incorporating the concept of secondary liability, and to move such a bill to the EY after additional industry and U.S. feedback. End comment.